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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,535	12/31/2003	Stephen Avedis Baratian	19392	5556

7590 07/28/2006

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EXAMINER

GOFMAN, ANNA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,535

Applicant(s)

BARATIAN ET AL.

Examiner

Anna Gofman

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 13,36-39,41,42,44,45,47-53,55 and 56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12,14-35,40,43,46,54 and 57-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 09/10/04, 04/26/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. The Examiner has carefully considered Applicant's response filed March 28, 2006. The rejection of claims 1-12, 14-35, 40, 43, 46, 54 and 57-59 has been maintained.

Claim Objections

2. The objection of claim 13 is dropped in view of applicant's amendments.

Claim Rejections - 35 USC § 102/103

3. The rejection of claims 1, 4-12, 14-35, 40, 43, 54 and 57-59 over Mormon (US 5,910,224) is withdrawn.

Claim Rejections - 35 USC § 103

4. The rejection of claims 2, 3, 40 and 46 over Mormon in view of Mleziva et al. (US 6,057,024) is withdrawn.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-12, 14-35, 40, 43, 46, 54 and 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al. (US 2003/0088228) in view of Bornslaeye et al. BE 899030 further in view of Radwanski et al. (US 4,939,016).

Please refer to pages 10-15 of the previous office action.

Desai et al. do not teach elastomeric strips comprising charged electrospun microfibers or droplets. Desai teaches stretch composites used in diapers, panties, etc. (abstract). Bornslaeye teaches an absorbent tampon for hygienic purposes with an absorbent pad enclosed between a permeable, non-woven cover, an impermeable panel which contains an absorbent core incorporating thermoplastic material, and folded double at least once with the fold secured by internal welds. For elongated pads the folds and weld zones are longitudinal. The core may incorporate additional strips of absorbent material with microfibers sheathing treated with surfactants (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add strips comprising microfibers as taught by Bornslaeye in the invention of Desai et al. motivated to attain a suitable absorbent article.

Bornslaeye does not teach elastomeric fibers. Radwanski et al. are drawn to non-woven elastomeric webs used in personal care products. Radwanski et al. teaches meltblown elastomeric fibers used in the personal care products (abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add the elastomeric meltblown fibers of Radwanski et al. in to the invention of Desai et al. motivated to attain a stretchable product.

Further, "charged electrospun" microfibers, as recited in claim 1e is a process limitation. Product by process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. "Even though product - by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of

production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe , 227 USPQ 964, 966 (Fed. Cir. 1985).

Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 218 USPQ 289, 292 (Fed. Cir. 1983).

The use of 35 USC 102/103 rejections for product by process claim has been approved by the courts. "[T]he lack of physical description in a product - by - process claim makes determination of the patentability of the claim more difficult, since in spite of the fact that the claim may recite only process limitations, it is the patentability of the product claimed and not of the recited process steps which must be established. We are therefore of the opinion that when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claimed in a product - by - process claim, a rejection based alternatively on either section 102 or section 103 of the statute is eminently fair and acceptable. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." In re Brown , 173 USPQ 685, 688 (CCPA 1972).

Response to Arguments

7. Applicant's arguments filed on March 28, 2006 have been fully considered but they are not persuasive. Desai et al. do not teach elastomeric strips comprising microfibers. Bornslaeye teaches an absorbent article comprising a non-woven web. Radwanski et al. teach a personal care product comprising a non-woven web of elastomeric meltblown fibers. Therefore, Desai et al. in view of Bornslaeye, and further in view of Radwanski et al. teach the newly amended limitation set forth in claim 1. Further, the limitation of "charged electrospun microfibers" is a process limitation since in the final product the microfibers are not charged but are charged in order to deposit them in strips.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anna Gofman whose telephone number is (571) 272-7419. The examiner can normally be reached on Mon.-Fri. 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anna Gofman
Examiner
Art Unit 1771


ELIZABETH M. COLE
PRIMARY EXAMINER

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